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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 PivotHealth Holdings LLC,
10 Plaintiff,
11 v.
12 Lucas B. Horton,
13 Defendant.
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No. CV-24-01786-PHX-SHD
ORDER

15 Before the Court are Plaintiff PivotHealth Holdings, LLC's, ("Pivot") Motion for
16 Sanctions, (Doc. 25), and Defendant Lucas Horton's Motion for Sanctions and Declaration
17 of Facts, (Docs. 41 and 42). At the hearing held on July 16, 2025, the Court declined to
18 consider the bulk of Pivot's Motion for Sanctions relating to allegations of Horton's
19 dishonesty, deferring that issue for summary judgement or trial in this matter. (Doc. 37.)
20 At the hearing held on August 21, 2025, the Court heard argument on the remainder of
21 Pivot's Motion for Sanctions pertaining to Horton's alleged abusive conduct, as well as
22 Horton's Motion for Sanctions, taking those matters under advisement. (Doc. 47.) The
23 Court considered the parties' briefing and the arguments presented at the hearing, and now
24 issues its ruling on the parties' Motions.

25 Regarding Pivot's Motion for Sanctions, the Court finds that Horton engaged in
26 abusive conduct as described by the Court at the August 21 hearing. (*See* Doc. 25-1 at 5–
27 11 (Ex. A).) Pivot stated that it does not seek monetary sanctions and only seeks an order
28 from the Court requiring Horton to behave in a civil manner. Horton did not object to such

1 an order. Therefore, the Court will issue the requested order and make it applicable to all
 2 parties.

3 Regarding Horton's Motion for Sanctions, the Court finds that Pivot violated Rule
 4 26(d)(1) by prematurely issuing a subpoena to third-party Yahoo Inc. That rule states, in
 5 pertinent part, that “[a] party may not seek discovery from any source before the parties
 6 have conferred as required by Rule 26(f), except . . . when authorized by these rules, by
 7 *stipulation*, or by court order.” Fed. R. Civ. P. 26(d)(1) (emphasis added). Here, the Court
 8 did not authorize the subpoena and the record indicates that there was no stipulation.
 9 Although Horton had sought leave to issue his own subpoena requesting essentially the
 10 same documents from Yahoo and had expressed agreement with some parameters of
 11 Pivot's subpoena, by November 15, 2024 he had stated that he did not agree to the
 12 subpoena. (*See* Doc. 25-1 at 6–8; *see also* Doc. 25 at 4–5 (recognizing that on or before
 13 November 15, 2024, Horton had “announced he would oppose Pivot's subpoena”)).
 14 Nonetheless, Pivot issued the subpoena on November 18, 2024. (Doc. 25-1 at 15 (Ex. B.).

15 At the August 21 hearing, Pivot explained that it believed it had Horton's implied
 16 consent to send the subpoena given that he had aligned on the date range for the requested
 17 documents and had sought to issue his own subpoena to Yahoo for the same material, and
 18 that moving forward with the subpoena conserved judicial resources. Although Pivot may
 19 have had a good faith basis to believe—or at least argue—it had Horton's implied consent,
 20 Rule 26(d)(1) requires a *stipulation* before a party can commence early discovery. There
 21 was no such stipulation here given Horton's clear opposition to issuance of the subpoena
 22 on November 15, 2024. *See* LRCiv. 83.7 (“No agreement between parties or attorneys is
 23 binding, if disputed, unless it is in writing signed by the attorney of record or by the
 24 unrepresented party, or made orally in open court and on the record . . .”); *see also*
 25 *Stipulation*, Black's Law Dictionary (12th ed. 2024) (“A voluntary agreement between
 26 opposing parties concerning some relevant point; esp., an agreement relating to a
 27 proceeding, made by attorneys representing adverse parties to the proceeding”).

28 Horton has requested \$3,000 as a sanction for the time he expended preparing and

1 briefing his Motion for Sanctions. Citing *Surowiec v. Capital Title Agency, Inc.*, Pivot
2 asserts the “general rule” that “[w]ith respect to pro se litigants,” “attorneys’ fees are not
3 a payable ‘expense’ under Rule 37 ‘as there is no direct financial cost or charge associated
4 with the expenditure of one’s own time,’” but recognizes the Court’s inherent power to
5 award such a sanction. 790 F.Supp.2d 997, 1011 (D. Ariz. 2011). Based on the
6 circumstances here, the Court does not believe a financial sanction would be appropriate
7 because Horton has not suffered any harm from the premature issuance of the subpoena
8 given that (a) he sought to issue a similar subpoena to Yahoo, (see Doc. 17), and (b) he
9 waited approximately nine months to raise this issue with the Court, long after Pivot gave
10 him notice that it would issue the subpoena, (Doc. 25-1 at 6), and long after Yahoo
11 responded.

12 Accordingly,

13 **IT IS ORDERED** denying in part and granting in part Pivot’s Motion for
14 Sanctions (Doc. 25);

15 **IT IS FURTHER ORDERED** that the parties shall treat each other civilly in their
16 interactions during this litigation;

17 **IT IS FURTHER ORDERED** denying Horton’s Motion for Sanctions (Docs. 41
18 and 42).

19 Dated this 22nd day of August, 2025.



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22 Honorable Sharad H. Desai
23 United States District Judge
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